

[Doc. Nos. 16, 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

DEAN SMITH,

Plaintiff,

v.

PROFESSIONAL BILLING &
MANAGEMENT SERVICES, INC., et
al.,

Defendants.

Civil No. 06-4453 (JEI)

**ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT
BETWEEN CLASS PLAINTIFF AND DEFENDANTS, APPROVING
FORM OF NOTICE AND AUTHORIZING DISSEMINATION OF
CLASS NOTICE TO POTENTIAL CLASS MEMBERS**

This matter is before the Court on Plaintiff's Motion in Support of Settlement and Approval of Class Notice [Doc. Nos. 16, 17]; and all parties consenting to the jurisdiction of this Court to enter this Order pursuant to 28 U.S.C. §636(c); and the Court having issued the accompanying Opinion; and for the reasons stated therein and good cause having been shown;

IT IS HEREBY ORDERED this 21st day of November, 2007, that Plaintiff's Motion in Support of Settlement and Approval of Class Notice is GRANTED; and

IT IS FURTHER ORDERED that the Court finds that the proposed class action settlement is sufficiently fair, reasonable and

adequate to authorize dissemination of notice of the proposed settlement to the settlement class (defined in this Order) and that a final determination regarding the approval of the settlement will follow a hearing after notice to potential class members; and

IT IS FURTHER ORDERED that for purposes of disseminating notice of the proposed settlement, and subject to final confirmation at the hearing on final approval of the proposed settlement contemplated by this Order, the Court preliminarily certifies the following Settlement Class ("the Settlement Class") pursuant to Fed. R. P. Civ. 23(a) and (b)(3):

All 2449 known natural persons who were sent correspondence similar to the attached Exhibit by the Defendants.

IT IS FURTHER ORDERED that for purposes of disseminating notice of the proposed settlement, and subject to final confirmation at the hearing for final approval of the proposed settlement, the Court preliminarily finds and concludes that:

1. The Settlement Class is so numerous that joinder of all members is impracticable, satisfying the requirement of Rule 23(a)(1);
2. There are questions of law or fact common to the Settlement Class, satisfying the requirements of Rule 23(a)(2);
3. The claims of the representative plaintiffs are typical of the claims of the Settlement Class, satisfying the

requirements of Rule 23(a)(3);

4. The representative plaintiffs will fairly and adequately protect the interests of the Settlement Class satisfying the requirements of Rule 23(a)(4);
5. Questions of law or fact common to the members of the Settlement Class predominate over questions only affecting individual members, and a class action is superior to other methods available for the fair and efficient adjudication of the controversy, satisfying the requirements of Rule 23(b)(3); and
6. The action is manageable as a class action; and

IT IS FURTHER ORDERED that pursuant to Fed. R. Civ. P. 23(g), the Court confirms the designation of Donald M. Doherty, Jr., Esquire, of Friedman, Doherty, LLC, as class counsel. The Court finds and concludes, pursuant to Fed. R. Civ. P. 26(g)(1)(B), that such counsel will fairly and adequately represent the interests of the Settlement Class; and

IT IS FURTHER ORDERED that the Notice attached hereto is approved and may be disseminated in substantially the same form. The Court finds that the mailing of the Notice to all members of the Settlement Class, by United States First Class Mail, postage prepaid, constitutes the best notice that is practicable under the circumstances, and operates as valid, due and sufficient notice to all persons entitled to notice, and complies fully with the

requirements of Fed. R. Civ. P. 23 and the due process requirements of the Constitution of the United States. In the event any of the mailings are returned because of an insufficient address, plaintiff's counsel shall use reasonable efforts to thereafter identify the current address of the recipient; and

IT IS FURTHER ORDERED that on or before December 5, 2007, the notice shall be mailed by First Class Mail, postage prepaid, to all members of the Settlement Class identified by settlement defendants; and

IT IS FURTHER ORDERED that all requests for exclusion from the Settlement Class shall be post-marked no later than January 11, 2008, and shall otherwise comply with the requirements set forth in the Notice; and

IT IS FURTHER ORDERED that plaintiff's counsel shall file with the Court and serve on the parties by January 31, 2008, their Petition for Award for Attorney's Fees and Reimbursement of Litigation Costs and Expenses and Their Motion for Final Approval of the Settlement Agreement and Class Certification; and

IT IS FURTHER ORDERED that any member of the settlement class who wishes to object to the proposed settlement of the litigation between the Settlement Class and the defendants, class counsel's request for an award of attorney's fees and expenses, and the request for an incentive award for the named plaintiff, must do so in writing post-marked no later than January 11, 2008, and shall

otherwise comply with the requirements set forth in the Notice; and

IT IS FURTHER ORDERED that at least seven (7) days prior to the date fixed by this Court for the final hearing, plaintiffs' counsel shall cause to be filed an appropriate affidavit attesting to the fact that the Notices referenced herein were mailed in conformance with this Order; and

IT IS FURTHER ORDERED that the Court will hold a hearing on February 8, 2008 at 2:00 p.m., at the Mitchell H. Cohen Courthouse, 4th and Cooper Streets, Camden, New Jersey, 08101, before the Honorable Joel Schneider, U.S.M.J., in Courtroom 3C, to finally determine the fairness, reasonableness and adequacy of the proposed settlement with the settling defendants and to determine (1) whether the proposed settlement is fair, reasonable and adequate and should be approved by the Court; (2) whether class counsel's request for attorney's fees and expenses should be approved; and (3) whether the request for an incentive award for the named plaintiff should be approved and a final judgment entered thereon. Any class member who follows the procedure set forth in the Notice may appear and be heard at the hearing.

s/Joel Schneider
JOEL SCHNEIDER
United States Magistrate Judge



Professional Billing
& Management Services, Inc.

Professional Billing & Management Services, Inc.
1000 Technology Avenue, Chambersburg, PA 17201
(717) 263-5562 • Fax (717) 263-7001

P.O. Box 977 • 5250 Technology Avenue • Chambersburg, PA 17201 • (717) 263-5562 • Fax (717) 263-7001

President - Sandra Kireta Chilcote

www.pbmsinc.com

September 12, 2006

Dear [REDACTED]

RE: Account Number - [REDACTED]
For Date of Service - [REDACTED]

Our records indicate that on [REDACTED], our client, Professional Anesthesia Consultants, P.C. (PAC) provided [REDACTED] services for your [REDACTED] procedure at [REDACTED] at [REDACTED]. As a result of a recently conducted audit of patient accounts, we have discovered that PAC was not paid for the above referenced service. The total outstanding amount of your account is \$[REDACTED]. Enclosed is an account summary for your review.

The reasons for non-payment of an account will vary from patient to patient. In order to settle your balance, however, we ask that you contact us within ten (10) days of your receipt of this letter at (800) 827-3458, extension 147 so that we can appropriately resolve your account.

Thank you in advance for your prompt response.

Sincerely

Professional Billing & Management Services, Inc.

Enclosure

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(CAMDEN VICINAGE)

Dean Smith, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

Professional Billing & Management Services, Inc.,
and Sandra Kireta Chilcole,

Defendant.

Civil Action No. 06-cv-4453 (JEI)

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, FAIRNESS HEARING,
FINAL SETTLEMENT APPROVAL AND DISTRIBUTION OF COUNSEL FEES**

I. Nature of the litigation. Plaintiff filed suit on behalf of 2,449 persons that received debt collection correspondence from the Defendant regarding medical bills in or about September of 2006. You have been determined to be one of the people that received such a letter. An example of such a letter can be viewed on Plaintiff counsel's website, <http://www.friedmandoherty.com> and is enclosed with this Notice. Defendants deny any wrongdoing or liability. Plaintiff, on behalf of the Class, and the Defendants have agreed to resolve this litigation with a settlement. This settlement effects your rights to sue the Defendants over their collection letter. *The settlement does not effect your rights against or claims with the medical provider that rendered the services or any other disputes.* It only limits your rights as to the Defendants for sending a letter that failed to comply with provisions of the Fair Debt Collection Practices Act.

II. The Settlement. Defendants will pay each person to whom an improper letter was sent the sum of \$6.50. Defendants will also change their practices regarding warnings and notices placed on the debt collection letters. Defendant has also agreed to pay Attorneys fees and costs up to \$17,500. Plaintiff will file a motion for the Court to determine the exact sum to be awarded. This sum does not affect the amount you are entitled to receive. The lead plaintiff in the case, Dean Smith, will receive up to \$2,500 for his role in the litigation. This does not effect the sums you receive. The full settlement agreement is available from Plaintiff's counsel at their website, <http://www.friedmandoherty.com> or can be requested at their address below.

III. How do I make a claim? There is no need to make a claim. If approved, the settlement provides that a check will be mailed to you without any further action on your part. If you are dissatisfied with the settlement, you may opt-out to pursue a case on your own with counsel of your own choosing. To do so, you must notify attorney Donald Doherty, Esq. at the address below in writing by _____ or you will be bound by the terms of the settlement.

The Court has set February 8, 2008 at 2:00 p.m. in the Courtroom of The Honorable Joel Schneider as the time and place to determine the fairness of this settlement. All interested parties must submit their support or objection to the settlement no later than January 11, 2008. These submissions must be submitted to all of the following parties and include the above caption and docket number.

Donald M. Doherty, Jr., Esq., Friedman Doherty, LLC., 125 N. Route 73 W. Berlin, NJ 08091

Christopher J. Conrad, Esq., Marshall, Dennehey, 4200 Crums Mill Road, Suite B, Harrisburg, Pennsylvania 17112

United States District Court, District of New Jersey, United States Courthouse
1 John F. Gerry Plaza, Camden, NJ 08101